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RECEIVED
JUN 22 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Christopher C. Cinnamon
Also admitted in Michigan

June 22, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CS Docket No. 98-54
Comments of the Small Cable Business Association

Dear Ms. Salas:

On behalf of the Small Cable Business Association ("SCBA"), we enclose an original and nine (9) copies of the above-referenced Comments. We request that each Commissioner receive a copy of SCBA's Comments.

If you have any questions, please call us.

Very truly yours,

Christopher C. Cinnamon

Enclosures

cc: Small Cable Business Association

No. of Copies rec'd 0+9
List ABCDE

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JUN 22 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C.

In the matter of	)	
	)	
1998 Biennial Regulatory Review--	)	**CS Docket No. 98-54**
	)	
Part 76 - Cable Television Service Pleading and Complaint Rules	)	

COMMENTS OF THE SMALL CABLE BUSINESS ASSOCIATION

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June 22, 1998

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SUMMARY

The Commission's review of Part 76 procedural rules provides a key opportunity to address the disparate administrative burdens and costs that those rules impose on small cable. SCBA asks the Commission to build upon the conclusions and policies articulated in the *Small System Order* and take this opportunity to reduce unnecessary regulatory burdens on small cable.

SCBA proposes specific revisions to the following six areas:

- **Program access complaints**. The Commission can adjust its procedures to lower the financial obstacles that impede small cable businesses from seeking program access relief.

- **Must-carry procedures.** The Commission can revise 47 CFR §76.7 to allow small cable businesses to treat any correspondence asserting must-carry as must-carry request that triggers response obligations and the complaint deadline. The Commission can also extend the response period to 180 days for channel-locked small systems to allow them additional time to conclude programming contracts and reorganize channel line-ups.

- **Market modification proceedings.** The Commission currently has pending an item that may standardize filing requirements for market modification proceedings. Those rules should include less burdensome filing requirements for small cable companies.

- **Effective competition petitions.** The Commission should adjust 47 CFR § 76.911 to require competing MVPDs to disclose penetration data by franchise area or allow small systems to use data aggregated by zip code, as Skytrends currently reports it.

- **Leased access complaint procedures.** The Commission should adjust its leased access complaint rules to allow small cable systems to submit a rate dispute directly to the Commission so as to avoid the cost of an independent accountant review.

- **Filing fees.** The Commission should allow small cable systems to seek filing fee waivers without having to submit a separate pleading and without having to pay the fee up front.

Before the
Federal Communications Commission
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In the matter of	)	
	)	
1998 Biennial Regulatory Review–	)	**CS Docket No. 98-54**
	)	
Part 76 - Cable Television Service Pleading and Complaint Rules	)	

COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION

The Small Cable Business Association ("SCBA") submits the following comments in response to the Commission's Notice of Proposed Rulemaking concerning means to simplify Part 76 pleading and complaint rules.[1]

I. INTRODUCTION

Founded in 1993, SCBA's membership now includes more than 350 small cable systems and small cable businesses throughout the United States. The majority of SCBA's member systems serve fewer than 1,000 subscribers. SCBA serves to represent the unique interests of small cable businesses before the Commission, Congress and other agencies. Much of SCBA's work involves seeking relief from the disproportionately high administrative burdens and costs that many regulations impose on small cable. SCBA

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[1] *See* 47 CFR §§ 76.1 - 76.1514.

frequently participates in Commission proceedings to communicate the concerns of small cable businesses and to inform the Commission of the adverse economic impact that its decisions can have on small cable.

This rulemaking provides a key opportunity to revise Part 76 to address the disparate administrative burdens and costs imposed on small cable by current procedural regulations. In these comments, SCBA first suggests the policies that should guide the Commission's efforts. SCBA then details specific changes that will effectuate those policies.

II. POLICIES TO GUIDE PROCEDURAL RELIEF FOR SMALL CABLE.

In the past three years, the Commission has made notable progress in recognizing the disparate administrative burdens and costs that many cable regulations have imposed on small cable businesses. The most significant effort emerged from the Commission's *Small System Order*,[2] where the Commission promulgated Form 1230 rate regulation. In the context of rate regulation, the Form 1230 simplified cost-of-service methodology provided significant small cable relief. Still, in other areas of Commission procedure, existing regulations continue to burden small systems with disproportionately high regulatory costs.

In the *Small System Order*, the Commission articulated conclusions and policies that justified regulatory relief for small cable The Commission stated:

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[2]*Sixth Report and Order and Eleventh Order on Reconsideration*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; MM Docket Nos. 92-266 and 93-215 (released June 5, 1995) ("*Small System Order*").

- We are particularly sensitive to the notion that smaller systems face disproportionately higher costs.[3]

- We acknowledge that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition.[4]

- Relaxing regulatory burdens should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress . . .[5]

- In the 1992 Cable Act and its legislative history, Congress made clear its belief that small systems would be in need of administrative and rate relief as a consequence of the re-regulation of the cable industry. We are convinced, however, that systems of up to 15,000 subscribers are likewise in need of relief and that we have the authority to extend relief to them.[6]

- [R]egulatory relief provided to these eligible systems will affect a majority of systems in the industry but a relatively small number of subscribers, thus limiting the overall impact of any rate changes that these new definitions permit.[7]

The Commission's observations and conclusions in the *Small System Order* readily apply to small cable considerations in this rulemaking. Drawing upon the *Small System Order*, the Commission can apply the follow principles to its review of Part 76 procedural rules:

- Small cable systems and businesses bear disproportionately higher costs of doing business than larger operators, including the costs of complying with Commission regulations and participating in Commission proceedings.

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[3] *Id.* at ¶56

[4] *Id.* at ¶25

[5] *Id.* at ¶26

[6] *Small Systems Order* at ¶26.

[7] *Id.* at ¶33

- The Commission has the authority to reduce the administrative burdens and costs of its regulations on small cable.

- Regulatory relief should be extended to systems meeting the current small cable/small cable company definition.

- Reducing costs through regulatory reform will free resources that will enable small cable systems to provide more services, better services and to help them compete with DBS providers and other competitors.

- Reducing or eliminating regulatory burdens for small cable will have a significant impact on a large number of systems, but will only impact a small fraction of all subscribers, broadcasters, leased access programmers and others.

With these principles in mind, SCBA details below procedural changes in six specific areas of Part 76.

III. SPECIFIC PART 76 CHANGES

A. Program access complaints

SCBA has previously highlighted for the Commission the need for low-cost, expedited procedures for program access complaints by small cable systems.[8] Despite creating the National Cable Television Co-op, a buying group that would rank as the third largest MSO,[9] small cable businesses still pay more than a strict application of the program access rules would allow. Nevertheless, the administrative costs of filing and prosecuting

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[8]*Comments of the Small Cable Business Association*, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage, (filed February 2, 1998).

[9]With approximately 8.5 million subscribers receiving programming through NCTC, only TCI and Time Warner purchase programming for larger subscriber blocks.

program access complaints remains beyond the financial ability of many small cable businesses.

Pursuing a successful program access complaint requires four steps: (1) investigation; (2) complaint preparation; (3) prosecution of the complaint; and (4) obtaining and enforcing meaningful relief. For many small cable businesses, the administrative costs of taking these steps, even if successful, remains a cost that exceeds the benefit received. The Commission needs to realign its procedures to allow small cable an opportunity to obtain meaningful enforcement of these critical provisions.

Ways that the Commission could improve each of the steps include:

1. Investigation.

Under current regulations, if a cable business suspects that a vertically-integrated program supplier provides programming to a competitor at discriminatory rates, terms or conditions, the operator only has the right to ask for relevant information, but not to require disclosure. The Commission should require disclosure of this information so that a small cable business can ascertain whether sufficient grounds exist for pursuing a complaint.

2. Preparation of the Complaint.

Currently, only individual cable systems or businesses have standing to file complaints. For small cable businesses, this means spreading the cost of a complaint over a relatively small customer base, resulting in a high per-customer cost. For example, if all members of the National Cable Television Cooperative wanted to file price discrimination claims against five major vertically-integrated programming services, it would require filing about 27,000 individual complaints.[10] The Commission could remedy this by giving recognized buying groups or other associations the right to file program access complaints on behalf of its members.

3. Prosecuting complaints.

Once filed, program owners take the offensive, launching volleys of pleadings and other requests. SCBA had such an experience when it challenged the ABC-Disney merger. ABC and Disney responded to SCBA's *Petition to Deny* with a seemingly endless series of pleadings, most of which had no foundation in the Commission's procedural rules. Still, the Commission continued to accept the filings, essentially requiring SCBA to prepare and file responses. The Commission should strictly adhere to its procedural rules and stop large media companies from waging wars of financial attrition against small cable businesses.

4. Meaningful relief.

If a small cable business succeeds in its program access complaint, the Commission must provide more than just prospective relief. Winning a complaint means that prior harm existed and must be remedied. SCBA has set forth a number of suggestions regarding different ways to compensate injured operators, including damages.[11]

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[10]NCTC currently represents about 5,400 cable systems.

[11]SCBA Comments in CS Docket No. 97-248 (filed February 2, 1998) at 13-14.

B. Must-carry procedures

Since the Supreme Court's decision in *Turner v. FCC*,[12] must-carry compliance obligations have become increasingly burdensome on small cable. SCBA members are receiving more must-carry demands, particularly from larger, well-capitalized enterprises, such as Paxson Communications and UPN. These entities are aggressively pushing must-carry rights, and in several cases, are using economic muscle to attempt to push mandatory carriage beyond what the Cable Act and Commission regulations allow.

Small cable systems face two hurdles in contending with mounting demands for mandatory carriage. First, few small systems have the administrative resources to manage must-carry compliance burdens in-house, especially in the face of sophisticated broadcast networks and their lawyers. Second, small systems are more likely to be channel-locked. These systems face the practical and legal dilemma of dropping satellite programming that is both popular with customers and for which the system is contractually bound to carry. The Commission can address both of these small cable issues with modifications to its must-carry complaint procedures.

Concerning the increasing aggressiveness of certain emerging broadcast networks, two recent cases warrant review. One case involved a small cable business in Michigan, Horizon Cable I, Limited Partnership ("Horizon Cablevision"). A review of the record in *In re: Complaint of Horizon Broadcasting Corporation against Horizon Cable I Limited*

[12] 137 L. Ed. 2d 369 (1997).

Partnership[13] shows that Station WJUE, Battle Creek, Michigan, a Paxson Communications' affiliate, delayed more than 147 days before filing its complaint, well beyond the 60-day complaint deadline. While this would appear a clear procedural default, the broadcaster vigorously pursued its complaint against Horizon Cablevision, requiring Horizon Cablevision to retain counsel and incur the economic costs and administrative burdens of a contested case. The Bureau properly dismissed the complaint as untimely. Still, the broadcaster continued to press its case through a petition for reconsideration, requiring the small cable business to participate in another round of pleadings. The Bureau ultimately dismissed the Petition for Reconsideration.[14]

Shortly after the Horizon Cablevision decision, another Paxson affiliate, Station KUBD, Denver, Colorado, filed a very similar complaint against another small cable business, Galaxy Telecom, L.P. Again, the broadcaster filed its complaint more than 479 days after its initial carriage request, well beyond the 60-day complaint deadline in §76.7(c). The small cable company had denied that request in writing on signal strength grounds.

In that case, the Bureau rendered a disturbing decision. Even though the broadcaster's initial letter stated that "if you have any objections to this <u>mandatory carriage request</u>, please contact the undersigned as soon as practicable," the Bureau concluded

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[13]Memorandum Opinion and Order in DA 97-2226, released October 21, 1997.

[14]Memorandum Opinion and Order, *In re: Complaint of Horizon Broadcasting Corporation against Horizon Cable I Limited Partnership* and *In re: Complaint of Horizon Broadcasting Corporation against Cablevision of Michigan, Inc.*, DA 98-0835 (released May 5, 1998).

that the letter was not a must-carry *request*, but a must-carry *election*. As a result, the Bureau reasoned, notwithstanding the small cable company's explicit denial on signal strength grounds, the 60-day complaint window had not begun to run. For cost reasons, the small cable company chose not to seek reconsideration of the decision, as a larger operator most likely would have.

The KUBD decision conflicts with Horizon Cablevision and other precedent.[15] Worse, the decision creates substantial uncertainty regarding the must-carry process and will require small cable to incur additional must-carry compliance costs. Under the KUBD decision, small cable businesses must now seek counsel to analyze each must-carry letter to determine whether it is a must-carry request that triggers a response or a carriage obligation or whether it is a must-carry "election" that does not. Otherwise, small cable businesses may relinquish precious channel capacity as a result of an improper must-carry demand. This result squarely conflicts with the Commission's policy underlying the must-carry procedural rules - certainty of carriage obligations.[16]

With a small adjustment to § 76.7(c)(4)(iii), the Commission can remedy the uncertainty created by the KUBD decision and provide channel-locked small cable

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[15]*In re: Complaint of Friendly Bible Church, Inc. against Viacom Cable*, 11 FCC Rcd 17115 (1996) (The Commission denied an application for review of a Bureau decision dismissing the station's complaint as untimely filed); *In re: Complaint of Fant Broadcasting Company of Nebraska, Inc. against Douglas Cable Communications, L.P.*, 10 FCC Rcd 8340 (CSB 1995) (The Bureau dismissed a station's carriage complaint as untimely filed).

[16]*See Friendly Bible Church*, 11 FCC Rcd 17115 at ¶¶ 6,9.

systems[4] with additional time to adjust programming line-ups to accommodate legitimate must-carry stations. SCBA suggests adding the italicized language to § 76.7(c)(4)(iii):

> (iii) No must-carry complaint filed pursuant to §76.61(a) (complaints regarding local commercial television stations) will be accepted by the Commission if filed more than sixty (60) days after the date of the specific event described in this paragraph. Must-carry complaints filed pursuant to §76.61(a) should affirmatively state the specific event upon which the complaint is based, and shall establish that the complaint is being filed within sixty (60) days of such specific event. With respect to such must-carry complaints, the specific event shall be:
>
> (A) The denial by a cable television system operator of request for carriage or channel position contained in the notice required by §76.61(a)(1), or
>
> (B) The failure to respond to such notice within the time period allowed by §76.61(a)(2); or
>
> *(C) In the case of a must-carry complaint filed against a small cable system, sixty (60) days after the receipt by such operator of any written correspondence from a broadcaster that asserts must-carry rights, whether that correspondence references §76.61, §76.64 or otherwise. Broadcasters and operators of small cable system may agree in writing to extend this complaint window. In cases where a small cable system verifies in writing to the broadcaster that it has no available channel capacity, the broadcaster shall allow the cable system an additional 180 days to create available channel capacity. The 60-day complaint period shall not commence until the end of such 180-day period.*

This addition to the must-carry procedural rules will improve existing procedures for both small cable companies and broadcasters in at least three ways. First, it will reduce the uncertainty and administrative burdens created by the KUBD decision. Small systems can treat any must-carry letter as a must-carry request triggering response obligations and the complaint window. The change will also make explicit that broadcasters and small cable systems can agree to toll the complaint deadline, thus avoiding the pressure broadcasters experience to file a complaint or lose must-carry rights. Finally, the 180-day extension for channel-locked small systems will allow these systems greater flexibility to reorganize channel line-ups to fit in additional must-carry stations. These changes will not materially impact broadcasters' must-carry rights and should lead to decreased must-carry complaint activity.

C. Market modification proceedings

Intertwined with the must-carry complaint procedures are the market modification rules contained in Section 76.59. The Commission has proposed changes to these rules that include a standardized filing format requiring the cable operator to gather a substantial amount of material.[17] Some small cable businesses might have legitimate grounds to seek market modification but will be deterred by the costs and complexities of such a procedure. To the extent that the Commission adopts standardized market modification filing requirements, it should include exceptions for small systems. The Commission should accept small cable system market modification requests in letter form and require only a description of the basis for the modification request. This will alleviate the cost disincentive small cable systems face when considering initiating this important procedure. To the extent such a filing lacks sufficient information for the Bureau to make a decision, the Bureau can request additional information.

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[17]Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, 11 FCC Rcd 6201, ¶¶ 52-53 (released May 24, 1996).

D. Petition for determination of effective competition

Establishing effective competition remains an important regulatory threshold for small cable systems. While Form 1230 and Section 301(c) of the 1996 Telecommunications Act have eased the administrative burdens and costs of rate regulation, portions of Section 623 still apply to small systems absent a showing of effective competition. Most significantly, small systems remain subject to the geographic uniform rate requirement of Section 623(d).[18]

As small cable attempts to compete with the aggressive price competition of certain satellite and wireless providers, price flexibility within a franchise area becomes increasingly vital. To obtain such flexibility, a small operator must obtain a determination of effective competition from either the local franchise authority or the Commission.[19]

In doing so, small systems face a fundamental problem -- obtaining penetration data from satellite providers. Section 76.911(b)(2) attempts to provide a means to obtain this data. It states:

> . . . if the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals.[20]

[18] *See* 47 USC § 543(d).

[19] *See* 47 USC § 543(a)(2); 47 C.F.R. § 76.915(a).

[20] *See* 47 C.F.R. § 76.911(b)(2).

Notwithstanding this rule, satellite providers, through the company Skytrends, will only disclose penetration data aggregated by zip code. In at least one effective competition case involving a small cable system that had a service area less that the zip code area, the Cable Services Bureau did not accept Skytrends penetration data for purposes of determining effective competition.[21]

The case involved a small cable business in Colorado that sought a determination of effective competition in response to competition by American Telecasting, Inc. and DBS providers. At ATI's urging, the Bureau rejected Skytrends penetration data because the zip code area extended beyond the franchise area, forcing the small cable company to conduct a home-by-home visual and phone survey to establish satellite penetration in the franchise area.[22] The small cable company's petition was ultimately granted, but not without substantial additional expense resulting from the DBS industry's failure to provide penetration data, specific to franchise areas.

The Commission should correct this problem and streamline its effective competition procedures for small cable systems. SCBA proposes two alternatives. First, the Commission can make clear that MVPD's must respond to a Section 76.911 request with penetration data aggregated by franchise. This will nearly always be limited to small system cases, so the DBS industry's protestations that it is economically impossible to do so should not dissuade the Commission. The DBS provider remains the least-cost

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[21] *In the Matter of: Tri-Lakes Cable, Monument, Colorado,* CSR-4724-E, 12 FCC Rcd 13170 (released August 25, 1997).

[22] *Id.* at ¶ 16.

gatherer of penetration data concerning its customers. In the alternative, the Commission can make clear that small cable systems may rely on Skytrends-type penetration data, regardless of inaccuracies that may result from aggregation by zip code. Either of these means will establish an efficient mechanism for small cable systems to obtain penetration data. A small cable company should never again be required to stretch its already thin administrative resources to conduct a house-by-house satellite dish audit to support an effective competition petition.

E. Leased access complaint procedures

In establishing revised leased access complaint procedures, the Commission provided some relief for small cable.[23] In practice, however, these rules have not adequately protected small cable businesses from the more aggressive leased access brokers. The Commission can take this opportunity to adjust its leased access procedures to provide small cable businesses with a less costly dispute resolution process.

SCBA members have faced extremely aggressive tactics from certain companies who refuse to accept the small cable company's leased access rate calculations. Companies like Lorilei Communications, Inc. d/b/a The Firm Multimedia appear to automatically dispute any quoted rate and threaten FCC complaints and other action.[24] This requires small cable businesses to invest more time to review rate calculations and

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[23]*See* 47 C.F.R. § 76.975.

[24]See Exhibit A.

exchange correspondence only to receive more letters escalating the leased access broker's challenges.

Under current procedures, all this will lead to a review by an independent accountant, a procedure that will entail a substantial per subscriber cost for most small cable systems. To address this situation, small cable businesses need a procedure that permits a direct determination by the Commission. In cases where a small cable system has calculated leased access rates in good faith using the Commission's straightforward formula, that small system should be able to bring the case directly to the Commission in a simple, low-cost process.

The Commission could accomplish this by adding the following subsection (6) to the commercial leased access dispute resolution rules in §76.975(b):

> *(6) A small cable system may elect to bypass the independent accountant review by filing with the Commission a request for review of leased access rates. That request shall:*
>
> *(i) Identify the leased access programmer or programmers challenging the small system's rates;*
>
> *(ii) Attach all correspondence between the cable system and the leased access programmer;*
>
> *(iii) Attach a leased access rate schedule and a description of the calculations on which it is based; and*
>
> *(iv) Contain a certification of small system status.*
>
> *The Commission shall then review the rates and make a determination of whether such rates are reasonable. During the pendency of the review, the leased access programmer or programmers may accept carriage based on the operator's quoted rates.*

A mechanism like this will permit qualifying small cable systems to avoid the administrative burdens and costs of an independent accountant review. This will also provide some protection for small systems that, under current rules, are now finding themselves pushed and threatened by leased access brokers.

F. **Filing fees**

The Commission should also revise its procedures for waiver of filing fees. Under current procedures, a cable operator must pay a filing fee upfront and submit a separate pleading requesting a waiver of the fee. The Commission should allow a small system to request a waiver of the filing fee in the pleading itself and not be required to submit payment up front. This is particularly important in cases involving small operators and petitions for special relief, where filing fees approach $1,000. In some cases, SCBA members have declined to seek relief because the filing fee combined with professional fees make the process too costly on a per subscriber basis.

IV. CONCLUSION

SCBA requests that the Commission consider in this rulemaking the disparate administrative burdens and costs imposed on small cable by Part 76 procedural rules and incorporate the changes to those rules detailed above.

Respectfully submitted,

Small Cable Business Association

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June 22, 1998

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EXHIBIT A

Post-it Fax Note Date 8/19 # of pages 1
To Eric Breisach
Fax URGENT
From Mike Reynolds
Phone

FIRM

August 19, 1997

L. Michael Reynolds or person responsible for leased access
Raystay Co.
469 E. North Street
Carlisle, PA 17013
Via Fax # 717-245-9277

Dear L. Michael Reynolds:

We previously requested leased access information on July 30, 1997, for your system, including rates, set-aside capacity, channel number utilized for part-time lease access, etc.

We are writing today because the 15 day deadline allowed under FCC rules for your response has expired, and to date we have not received any response.

We are set to begin airing programming on a part-time basis on your system beginning in September, so time is of the essence. Please respond to our request for information no later than close of business Wednesday, August 20, 1997 or we will begin the process of an FCC filing against your system on Thursday, August 21, 1997.

Sincerely,

Gerry Cunningham

Gerry Cunningham, President

cc: Meredith Jones, Chief, Cable Services Bureau FCC
via fax # (202) 418-2376

WE CREATE DEMAND

FIRM

September 2, 1997

L. Michael Reynolds
Vice President
Raystay Company
Carlisle, Pennsylvania
Via fax #: 717-245-9277

Dear Mr. Reynolds,

Thank you for your recent response to our request for Leased Access information. However, we can not agree to some of the information provided.

The rates you included in Schedule 4, are not in compliance with FCC 97-27. We also need for you to break down the technical fees you listed.

Please fax corrected rates and technical fee breakdown to my assistant, Cynthia Lipscomb, at 352-861-1339 immediately.

Thank you.

Sincerely,

Gerry Cunningham

Gerry Cunningham, President
Lorilei Communications, Inc., dba THE FIRM Multimedia

WE CREATE DEMAND

http:\\www.callthefirm.com • thefirm@mercury.net

THE FIRM Multimedia

September 9, 1997

Mr. L. Michael Reynolds, V.P.
Raystay Co.
Carlisle, PA
Via Fax # (717) 245-9277

Dear Mr. Reynolds,

We are in receipt of your letter dated September 3, 1997.

First, let me say that we work with cable systems across the nation who air our programming under leased access, and we maintain a database of rates and other information on these systems.

By comparison, the rates you have quoted us, and attested to as truly calculated under the FCC's revised rules, are substantially higher than those on cable systems of similar size. For example, one system with 41,000 subs has prime rates of $35.70 per hour and offprime of $19.83, another system with 38,000 subs has prime rates of $29.94 per hour and offprime rates of $23.39 per hour. These rates are substantially less than those quoted us, and as you can see the spread of cost between these systems is in ratio to the number of subscribers. There is definitely something wrong with the manner in which your rates have been calculated, because your rates should be right in the middle.

The Commission's revised rules stipulate that within five days of a dispute over leased access rates, the parties must mutually agree on a CPA firm to audit the rates. Under the rules the losing party is responsible for the costs of such an audit. We doubt that Raystay would want to be exposed to such a cost, therefore we again respectfully ask that you examine these rates and adjust them to meet current FCC rules.

Box 770787 Ocala, FL 34477
(352) 861-1350 fax (352) 861-1338 or 1339
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